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IN THE

Supreme Court of the United States

OCTOBER TERM, 1965

No. 260

MILDRED GIBBONS, NAPOLEON C. ZBYSZEWSKI, AILEEN BIEL, IDA JACOBSON, GEORGE PAPANTONATOS, LEON PERMAN, HYMAN M. STEIN, ALLAN KLEIN, KUNIO SHIMIZO, ET AL.,

Petitioners,

vs.

CITY OF CHICAGO, A MUNICIPAL CORPORATION,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF ILLINOIS.

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PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF ILLINOIS.

Petitioners pray that a writ of certiorari issue to review the judgment entered on January 25, 1966, by the Supreme Court of the State of Illinois, reversing a decree of the former Superior (now Circuit) Court of Cook County, Illinois, enjoining the enforcement of an ordinance of the City of Chicago relating to "Self-Service Coin-Operated Laundry Establishments" (hereinafter sometimes referred to as laundromats), upon the ground that such ordinance violated the constitutions of the United States and of the State of Illinois.

CITATION TO OPINION BELOW.

The Opinon of the Supreme Court of the State of Illinois is printed in Appendix B, infra pp. 25-34, and is reported in 34 Illinois 2d 102.

JURISDICTION.

The judgment of the Supreme Court of the State of Illinois was entered on January 25, 1966. A timely Petition for Rehearing was filed in the office of the Clerk of the Supreme Court of Illinois, on February 4, 1966. The Petition for Rehearing was denied on March 23, 1966. The jurisdiction of this Court is invoked under 28 USCA, Section 1257(3). The federal questions sought to be reviewed were raised by the complaint in the former Superior (now Circuit) Court of Cook County, Illinois, wherein it was specifically asserted (R. 26, p. 7) as follows:

> "18. Said ordinance is unconstitutional, invalid, void and illegal because:
>
> * * * * *
>
> (b) Said ordinance is contrary to Amendment V of the Constitution of the United States which provides that,
>
> 'No person shall be . . . deprived of life, liberty, or property without due process of law.'
>
> (c) Said ordinance is contrary to Amendment XIV, Sec. 1, of the Constitution of the United States which provides,
>
> 'No state shall make or enforce any law which shall abridge the privilege or immunities of citizens of the United States, nor shall any state deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.'"

They were also raised in the Brief and Argument for Plaintiffs-Appellees (R. 26, p. 40) wherein it was contended:

> "An ordinance depriving the citizen of his liberty or property rights cannot be sustained unless a due regard for the public health, safety, comfort or welfare requires it."

And R. 26, at p. 62 of the Brief and Argument for Plaintiffs-Appellees, where it is stated:

> "The requirement that every coin-operated laundry must be closed between 11:30 P. M. and 6:30 A. M. bears no relationship to public health, safety, comfort of welfare and is accordingly unconstitutional and invalid."

The Supreme Court of Illinois specifically found that the Ordinance of the City of Chicago complained of did not violate the Constitution of the United States. The Court said in its opinion, Appendix B, p. 31:

> "We are satisfied upon this record that the attendant and compulsory closing provisions of the ordinance are neither arbitrary nor unreasonable (see *Kaukas* v. *City of Chicago*, 27 Ill. 2d 197, 201-203; *Queenside Hills Realty Co.* v. *Saxl*, 328 U. S. 80, 90 L. ed. 1096, 66 S. Ct. 850), and that they do not violate the constitution of Illinois or the Constitution of the United States."

QUESTIONS PRESENTED.

1. Does an Ordinance which imposes an oppressive economic burden on small businesses by requiring the presence of attendants in coin-operated self-service laundries during all open hours violate the Federal Constitution where the evidence shows without substantial contradiction that (a) attendants in Chicago coin-operated self-service laundries serve no purpose whatever, (b) their presence does not prevent either accidents or fires, and (c) their

presence tends to increase rather than decrease serious crimes.

2. Does an Ordinance requiring the closing of coin-operated self-service laundries at 11:30 P. M. each evening, even with attendants present, where other forms of business with attendants present are permitted to remain open after such hour, violate the Federal Constitution where no evidence has been introduced to show that such coin-operated self-service laundries create a greater hazard than other forms of business during such hours.

ORDINANCES INVOLVED.

The statutory provisions involved:

Sections 145-24.1 through 145-24.6 of the Municipal Code of Chicago, adopted on July 28, 1961, and Amendments to Sections 145-24.3 and 145-24.4, adopted April 17, 1964. They are printed in Appendix A, *infra* pp. 21-24.

CITATIONS TO THE RECORD.

The Clerk of the Supreme Court of Illinois numbered the entire Abstract of Record as "Record 26". Citations to the record herein, therefore, are to "R. 26", followed by references to the particular page within the Abstract.

STATEMENT OF THE CASE.

The City Council of the City of Chicago, by ordinance adopted July 28, 1961, provided, in substance, that there should be present in every Self-service Coin-operated Laundry Establishment an attendant between the hours of 6:00 P. M. and 11:30 P. M.; that such attendant should be licensed; and that no Self-service Coin-operated Laundry would be permitted to operate between the hours of 11:30 P. M. and 6:30 A. M.

The ordinance originally also provided that the division fire marshal in charge of the bureau of fire protection and the commissioner of health should examine an applicant for licensing as an attendant to determine whether he was a citizen of the United States; was of legal age, temperate habits and good moral character; was able to speak and understand the English language; had evidence of his employment or occupation and residence for the previous two years; was familiar with the operation of machines used in laundromats; and was familiar with risks incident to the operation of such machines and capable of taking necessary precautions. On April 17, 1964, by amendment adopted after completion of the hearings before the master and immediately prior to the entry of the decree herein, the requirement of citizenship was eliminated and it was made mandatory that a certificate of fitness issue upon fulfillment of the stated requirements.

The petitioners, who are owners and operators of Self-Service Coin-operated Laundries, sought to enjoin the enforcement of the ordinance. The trial chancellor granted such an injunction decree after a full hearing before a Master in Chancery. This decree was reversed and set aside by the Supreme Court of the State of Illinois.

With respect to those portions of the ordinance requiring the presence of an attendant during certain hours, at the hearing it was contended by the City that such an attendant would prevent accidents, prevent fires, and reduce serious crime. As to accidents the evidence actually showed that there were practically no personal injuries or hazards whatever in the operation of a self-operated laundry. Insurance men insuring 825 laundromats in and around Chicago so testified (R. 26, pp. 112, 114). Representatives of the leading manufacturers of laundromat equipment testified that to their knowledge there had been no injury claims arising out of the operation of such laundries (R. 26, pp.

138, 145, 198, 391). Operators of laundromats testified that they had never witnessed an injury to any customer operating the machines therein (R. 26, pp. 295, 314, 319, 363, 377, 427).

With regard to fires the record shows conclusively that the risk of fires in self-operated laundries is practically nil (R. 26, pp. 126, 233, 313, 319, 333, 363, 367, 375, 379, 387, 397, 401, 404, 411, 427, 432, 508, 509). All self-service laundries employed maintenance men and the attendant would have nothing whatever to do with whether there were fires or not (R. 26, pp. 375, 504, 505, 510).

Indeed, the Supreme Court of Illinois, itself, conceded that:

> "There appear to be few instances of either fires or personal injuries due to negligence or accident in these establishments, and there has been no difference between attended and unattended laundries in the rates for insurance against fire and personal injury risks." (Appendix B, p. 29.)

That Court then went on to say:

> "We need not determine whether the matters thus far discussed, which relate to considerations of public health and the risks of fire and personal injuries, would be sufficient, standing alone, to justify the requirement that an attendant be present when the establishment is open at night."
>
> "For we are of the opinion that when they are considered in conjunction with considerations related to the deterrence of crime and criminal activity, both the requirement of an attendant and the compulsory closing provision of the ordinance are clearly justified." (Appendix B, p. 30.)

The Court then went on to indicate that its opinion rested almost solely upon the opinions of several Chicago police officers that the ordinance requirements would deter crime. Curiously enough, however, the record conclusively

shows, for example, that the presence of an attendant always increased rather than decreased the number of serious crimes. This is due to the fact that virtually all of the serious crimes involved the attendant himself. For example, the two situations relating to murder occurred when attendants were present because the attendant either murdered someone or was murdered himself (R. 26, pp. 472, 541, 559). Also, although there were nine times as many stores without attendants as there were with attendants (R. 26, pp. 253, 259) there were twice as many robberies when an attendant was present as when no attendant was present (R. 26, pp. 479, 483). With respect to crime the record also shows the following.

There were no rapes whatever in or in any way connected with a coin-operated laundry (R. 26, p. 461).

There were no molestations at or near a coin-operated laundry (R. 26, pp. 481, 482).

It could not be deduced from the police records that there was any greater loss of clothing from unattended than from attended self-service laundries (R. 26, p. 453).

There were no crimes connected with narcotics in coin-operated laundries (R. 26, p. 456).

There were no assaults in coin-operated laundries (R. 26, p. 461).

At least 75% of the matters set out in the police reports were routine reports of incidents, such as juveniles congregating, not constituting crimes at all (R. 26, p. 457).

In many areas coin-operated laundries stayed open after 11:30 at night (R. 26, p. 259). Waitresses, night nurses, other people who worked late, patronized coin-operated laundries after 11:30 (R. 26, pp. 261, 264). Laborers, housepainters, all came in at midnight (R. 26, p. 264). Musicians and certain types of mechanics came in after mid-

night (R. 26, p. 264). There were areas in which people working factory night shifts, the so-called swing-shift, used laundromats between the hours of 11:00 P.M. and 6:30 A.M. (R. 26, pp. 288, 289).

Where coin-operated laundries operated after 12:30 P.M., between 10% and 20% of their business was done after 11:30 P.M. (R. 26, pp. 264, 321, 428).

Police reports made no reference whatever to the hours that the incidents complained of occurred (R. 26, p. 449).

Of the 25% of the incidents which were crimes, by far the greater number were burglaries (R. 26, p. 467).

Practically all of the burglaries occurred when the store was closed and locked (R. 26, p. 483). Locking up the store and turning out the lights would tend to increase the number of burglaries (R. 26, pp. 559, 560).

REASONS FOR GRANTING THE WRIT.

The petitioners are aware, as this Court unquestionably is, of that line of decisions rendered by this Court of which *Ferguson* v. *Skrupa*, 372 U. S. 726 (1962) is a recent example. The petitioners respectfully suggest that such cases are grounded on the premise that the businesses therein were legitimate objects of legislative concern. In the instant case it is requested that this Court grant its writ of certiorari because the ordinance herein imposes the likelihood of business failure upon a class of business, i.e. coin-operated self-service laundries, composed of small, uninfluential people engaged in the rather plebian occupation of furnishing facilities for washing clothing to persons of low and moderate incomes. This is a legitimate and respectable business in no way endangering the health, safety or welfare of the people of the City of Chicago and requiring no greater degree of regulation than any other small business. The large commercial laundries, not the

people of Chicago, are the only beneficiaries of this legislation.

From the face of the ordinance its objectives might appear to be a legitimate source of legislative concern. The ordinance, in essence, provides for attendants to be present in coin-operated self-service laundries during certain hours; it requires such attendants to obtain certificates of fitness prior to their employment; and it requires such laundries to close during the late evening and early morning hours. From this, without an examination of the actual facts, one might postulate that fires, accidents or crimes have occurred which have become a source of legislative concern and that either the presence of an attendant or a closing hour requirement might aid in the solution of such problems.

However, when the facts are examined in an effort to ascertain why this class of business has been selected for regulation, it is clearly apparent that there has been no showing of need or of a proper legislative purpose for such an ordinance. This lack of support is of some moment in this case because of the extreme financial impact of the subject ordinance on the class sought to be regulated. Before the City of Chicago is permitted to enforce this legislation, the petitioners only ask that at some stage the City be required to ground its case on some facts which show the existence of some evil. In examining the record in the instant case for such facts the petitioners respectfully submit that the following are of some significance:

First, as to the nature of a typical laundromat in the City of Chicago, it has 20 to 22 washing machines; it has 6 to 8 drying machines; its initial investment in equipment ranges between $16,000.00 and $18,000.00; it has between $7,000.00 and $8,000.00 in leasehold improvements; is used by 200 to 250 customers; and has a per use charge of 20¢ to 25¢ (R. 26, pp. 274-277). The average monthly profit

and loss statement ranges between a net loss of $135.00 and net profit of $200.00 (R. 26, pp. 231, 280, 281, 294, 312, 318, 333, 364, 375, 399). There is no appreciable difference in total gross receipts between those laundromats charging 25¢ per use and those which charge 20¢ per use (R. 26, p. 277). According to the records of the Chicago Police Department, there are 793 such laundromats in the City of Chicago (R. 26, p. 436).

Second, with respect to the question of whether such regulation might be needed due to the danger of fires or personal injuries, as the Supreme Court of Illinois concedes (Appendix B, p. 29):

> "There appear to be few instances of either fires or personal injuries due to negligence or accident in these establishments, and there has been no difference between attended and unattended laundries in the rates for insurance against fire and personal injury risks."

This conclusion is based on the fact that witnesses for the City of Chicago alluded to no specific instances of fires in laundromats but only referred, in general terms, to incidents where, for example, the witness understood that smoke had gotten into the vents from the dryers (R. 26, p. 508) and that witnesses in the insurance industry who appeared for the petitioners testified that they knew of no fires in laundromats (R. 26, p. 129).

Third, the record showed that there were no personal injury accidents in laundromats (R. 26, pp. 204, 301, 303, 309, 363, 379, 386, 393) and that the premium rate for public liability insurance was the same for unattended and attended laundromats (R. 26, pp. 126, 128, 129).

Fourth, regarding the actual occurrence of crimes in laundromats, the City of Chicago had its police department conduct a survey of "incidents" occurring in laundromats. Upon cross-examination it developed that 75% of these "incidents" did not involve crimes at all, but

merely involved the reporting of an occurrence such as juveniles congregating (R. 26, p. 457). With respect to the City's position that such incidents occurred more frequently in unattended laundromats, it further developed that when the reporting officer did not know whether or not a laundromat had an attendant, the officer was instructed to, and did in fact, report that the laundromat was unattended (R. 26, p. 454).

As against this, witnesses in the insurance industry appeared on behalf of the petitioners and testified, among other things, that premium rates for burglary insurance, for example, were based on particular trade groups and were on an ascending scale ranging from Category No. 1, which had the lowest premium rate, to Category No. 8, which had the highest premium rate, and that laundromats were in Category No. 2 (R. 26, p. 127), and that the rate was the same for the unattended laundromat as it was for one with an attendant.

Therefore, it finally became apparent from the testimony, and in particular the testimony of the police officers appearing on behalf of the City of Chicago, that virtually the only crimes committed in laundromats, other than those where an attendant or porter had been held up, shot, or had shot someone, were those affecting only the owner of the establishments, e.g., instances of malicious mischief where someone wrote on the wall with lipstick, where someone broke the soap dispenser or candy machine and removed soap or candy therefrom, or where someone broke into the coin receptacle and removed $2.00 or $3.00 in change therefrom. The annual cost of such incidents was merely absorbed by the owner as a cost of doing business and amounted to between $25.00 and $50.00 per year (R. 26, pp. 297, 314, 319, 320, 494). For purposes of the survey conducted by the Chicago Police Department, such incidents as where on some occasions small boys had taken

$2.00 or $3.00 out of the Coca Cola machine, were classified as larcenies, and if a chisel was used to pry open such a machine, such an incident was classified as a burglary (R. 26, p. 449).

The following testimony of police officers appearing on behalf of the City of Chicago is illustrative of much of the foregoing. With respect to crimes in his district Captain James P. Hackett of the Chicago Police Department testified in the following manner:

(1) He knew of only one murder in a laundromat and that involved not the murder of a customer, but the murder of an attendant (R. 26, p. 541);

(2) There were no attacks on women in laundromats (R. 26, pp. 541, 543);

(3) There were attacks on women in the streets, but these had occurred after they had left the lighted laundromat (R. 26, p. 544), such attacks being caused by the fact that the women were on the streets at night, not that they had been to the laundromat (R. 26, p. 547);

(4) There were no robberies in laundromats (R. 26, p. 546);

(5) Burglaries in laundromats were very low because there was nothing in a laundromat to appeal to a burglar (R. 26, p. 546);

(6) The usual type of incident in a laundromat "would be some kids trying to get $2.00 or $3.00 out of a coin receptacle, or a drunk, drunks hanging out in there who think they could get $2.00 or $3.00 or $10.00 or $15.00 easy", and that breaking into the coin receptacle was termed a larceny (R. 26, pp. 546, 547).

District Commander John McDermott of the Chicago Police Department testified as follows:

(1) Only one crime had been called to his attention in a laundromat (R. 26, p. 555) and that was where the at-

tendant murdered five customers with a shotgun (R. 26, p. 557);

(2) Closing the laundromat would reduce the incidents of larceny, e.g., breaking into the coin receptacle, but would increase the incidents of burglary (R. 26, pp. 559, 560).

District Commander Thomas J. McNulty of the Chicago Police Department testified with respect to his district as follows:

(1) There were no robberies, no instances of narcotics, and no instances of derelicts (R. 26, p. 566);

(2) There were four instances of drunks in attended laundromats and only three such instances in unattended laundromats (R. 26, p. 566);

(3) There were five instances of juveniles congregating in attended laundromats and seven such instances in unattended ones (R. 26, p. 566);

(4) There were no instances of sex crimes and no instances of book making (R. 26, p. 566);

(5) There were five larcenies in attended laundromats, but only two such instances in unattended laundromats (R. 26, p. 566);

(6) As a larceny or burglary prospect a laundromat was not very attractive to the criminal because of the small amounts of money in the coin receptacles (R. 26, pp. 566, 567);

(7) The same number of criminal occurrences happened in attended laundromats as happened in unattended ones (R. 26, p. 571).

Regarding incidents that were classified in the police survey as molestations in laundromats, upon cross-examination Lieutenant Michael Spiotti of the Chicago Police Department admitted that one such molestation involved an incident where a woman was attacked in her home and

fled to the lighted laundromat for protection and another such instance was where a woman had been to the laundromat and upon her return to her apartment building was attacked in the hallway (R. 26, p. 481).

All four of these officers gave as their opinion, however, based on their professional experience, that the ordinance herein would have a salutary effect, apparently based on the premise that the ordinance would cut down on the incidents of malicious mischief and vandalism. As set forth at pages 30 and 31 of the opinion of the Illinois Supreme Court, attached hereto as Appendix B, it apparently was the decision of that Court that the opinions of these police officers, based almost solely on their professional experience and without regard to the facts as shown in the record, constituted a sufficient showing of need and legislative purpose to sustain the validity of the ordinance.

The petitioners respectfully submit that these opinions, unsupported by any factual showing and often contradicted by the witnesses' own testimony, do not constitute a sufficient showing, particularly in light of the extreme economic impact on the owners of the laundromats sought to be regulated. That economic impact is shown by the basic arithmetic in this case. The uncontroverted evidence herein shows that the typical profit and loss picture of the average Chicago laundromat ranges between a net loss of $155.00 and a net profit of $200.00. The evidence also shows without contradiction that from the standpoint of the operation of the laundromat an attendant would serve no function, would act to deter the patronage of a certain class of customer (R. 26, pp. 203, 295, 426), and would require a salary, plus social security payments, of between $200.00 and $250.00 per month (R. 26, pp. 296, 231). The evidence further shows that based on experience in Chicago laundromats to the date of the trial, gross receipts do not in-

crease substantially when the per use charge is increased (R. 26, p. 286).

With respect to the constitutionality of legislation this Court has indicated time and again, as illustrated by the dissenting opinion of Mr. Justice Brandeis in *Adams* v. *Tanner*, 244 U. S. 590, 599, 600 (1916); *Nebbia* v. *New York*, 291 U. S. 502, 525 (1933); *West Coast Hotel Co.* v. *Parrish*, 300 U. S. 379, 398 (1936) and *Day-Brite Lighting, Inc.* v. *Missouri*, 342 U. S. 421, 424 (1951), that there must be a proper legislative purpose; that the means of regulation selected should bear a real and substantial relation to the legislative object sought to be attained; and that the reasonableness of such regulation depends upon the relevant facts. Based on the evidence in the case at bar, however, it really is difficult to determine the legislative end desired or the legislative problem which the City Council of Chicago decided needed a remedy.

For example, with respect to the requirement of an attendant during certain hours, the Supreme Court of Illinois sustains the ordinance from "considerations relating to the deterrence of crime and criminal activities." But the evidence shows without contradiction the extraordinary fact that, other than burglaries which usually take place after the establishment is closed, all serious crimes in Chicago laundromats occurred with attendants present because it was the attendant who was involved in such crimes. This is shown by such facts as that all of the murders occurred in laundromats with attendants present. If the number of attended as compared with the number of unattended laundries is considered, it will be observed that there were 20 times as many robberies in attended laundries as there were in unattended laundries. In addition, the police reports show that there were no rapes in coin-operated laundries, no molestations, no crimes involving nar-

cotics, no assaults, nor was there any greater loss of clothing from unattended than from attended laundries.

So far as the closing hour is concerned the police reports made no reference whatever to the hours that the incidents which they reported occurred. However, by far the greater part of crimes in connection with laundromats are burglaries, most of which occur after the store is locked and the lights are turned off. On this state of the record it really is conclusive that neither the requirement of an attendant nor the closing hour requirement would reduce the volume of serious crime in coin-operated laundries.

The constitutionality of the basic provisions of the ordinance in the case at bar have been considered by respected courts in other jurisdictions and found to be constitutionally defective.

In the case of *Heard* v. *Bolton*, 107 Ga. App. 863, 866, 867, 131 S. E. 2d 835, 838 (1963), in which the court held that the portion of an ordinance of the City of Griffin requiring "a self service (coin operated) laundry" "to close between the hours of eleven p.m. and seven o'clock a.m. unless it has an attendant on duty during such hours is unreasonable, arbitrary and oppressive and bears no relation to the good order, peace, and safety and health of the community," the concurring judge said:

> "* * * Conditions may vary in different communities and circumstances surrounding such an operation may be completely harmless in one city or area and a crime-breeding spot in another. This was the apparent reasoning of the court in the case of *Schacht* v. *City of New York*, 219 NYS 2d 53, in which the court held that an ordinance requiring all coin-operated laundries to close between the hours of 12 midnight and 6 a.m. and requiring such laundries to have an attendant upon the premises from 6:00 p.m. until midnight was a valid exercise of the police power of the city. The evidence in that case included a survey which disclosed

that prior to such ordinance many crimes had been committed in unattended coin-operated laundries, including crimes against the person, grand larceny, burglary and malicious mischief; that 50 percent more crimes were committed in unattended laundries than in attended laundromats; and that unattended laundries had become the hangouts for drunks, book makers, narcotic addicts, and other undesirable persons.

"Upon a showing of such similar conditions existing in the City of Griffin or any other municipality in this State, I would most certainly conclude that the enactment of such an ordinance as here involved would be a valid exercise of the police power of that municipality. While it is not meant to suggest that a city must forego action on such matters until intolerable conditions actually exist, yet such action when taken must be supported by a showing that such conditions have become generally associated with the conduct of this particular business in this section and area, as distinguished from the experience of such business operation in another or isolated area. The threat of such harm must be imminent rather than merely anticipatory."

In the case of *Van Sciver* v. *Zoning Board of Adjustment*, 396 Pa. 646, 656, 657, 152 A. 2d 717, 723, 724 (1959), the court said:

"(11). The last condition that there be an attendant present on the premises at all times would remove from the operation of a laundromat all its attendant advantages. The widespread use by the public of this type of service is due basically to its low cost which results from the very fact that it is unattended. To require an attendant is tantamount to banning it * * *. It is clear, therefore, that the conditions imposed not only are unreasonable but bear no reasonable relation to the health, safety, morals and general welfare of the public and would be an unnecessary, unwarranted and unreasonable intermeddling with the applicant's ownership of his property."

"The condition imposed that the laundromat may not operate before 8 a.m. nor after 8 p.m. denies the appellant the use of this property when other automatic hand laundries are in operation. If crimes are to be committed or the machines are to emit odors or fumes, or this would become a hangout for unsavory persons, all of this could occur between 8 a.m. and 8 p.m. as well as before or after. If such conditions come about they could presumably be handled by lawful police action. We do not take in the sidewalks or subways at night and even taprooms lawfully operate until 3 a.m."

CONCLUSION.

With respect to the ordinance in the instant case, it is respectfully submitted that on the facts shown in the record there exists no actual problem with respect to Chicago laundromats which would be of proper concern to the City Council of Chicago, and even if such a problem existed, the remedies of requiring the presence of an attendant and requiring the closing of laundromats during certain hours do not bear a reasonable relationship to the cure of such problems. In fact, the ordinance herein serves no social purpose whatever.

The requirement of an attendant does not tend to prevent accidents or personal injuries in coin-operated self-service laundries because there are literally no accidents or personal injuries in such laundries. The presence of an attendant would not prevent or reduce fires because there are virtually no fires in laundromats.

As to crimes, the presence of an attendant not only would not reduce serious crime, but, even viewing the evidence herein in the light most favorable to the City, actually would increase serious crimes in laundromats because such crimes almost without exception involve the attendant himself. The two incidents involving murders, 20 times the number of robberies, and indeed all of the serious crimes in

coin-operated laundries occurred only when attendants were present.

That portion of the ordinance requiring the closing of coin-operated laundries at 11:30 P.M. likewise serves no social purpose. Other than malicious mischief the principal crime connected with a coin-operated laundry is burglary. Burglaries occur only after the laundry is locked up and the lights are turned out. If a laundry is left open and lighted, there are no burglaries whatsoever.

We realize that the doctrine that prevailed in *Lochner, Coppage, Adkins, Burns* and like cases—that due process authorizes courts to hold laws unconstitutional when they believe the legislature has acted unwisely—has long since been discarded. We realize that the Court "has returned to the original constitutional proposition that courts do not substitute their social and economic beliefs for the judgment of legislative bodies, who are elected to pass laws." We realize that "it is only invidious discrimination which offends the constitution." *Ferguson* v. *Krupa*, 372 U. S. 726, 730 (1962).

But there are no social or economic beliefs involved in this case. The petitioners herein constitute a large group of small and uninfluential people. They furnish facilities at a low price for people of small income to wash their clothes. They complain of an ordinance which requires them to maintain attendants to prevent accidents and fires that never occur. They complain of a closing ordinance that would unquestionably increase serious crime. They complain of an ordinance that could only be for the benefit of the large commercial laundries.

The petitioners do not ask this Court to sit as a super-legislature nor do they ask this Court to impose judicial theories of sociology or economics on the Chicago City Council. The position of the petitioners is simply that at

some point in time the aldermen of Chicago should be called upon to demonstrate an actual need for legislation, a need based on fact, not hypotheticals.

The only evidence on behalf of the City that a problem even exists consists of the raw opinions of four Chicago policemen that the ordinance herein would have a beneficial effect. It is submitted that such opinions do not constitute a showing sufficient to impose an oppressive annual financial obligation approximating $2,000,000 on this class. The net effect of the City's evidence is that there is no real problem with laundromats in Chicago. Before the owners of a group of respectable, but, from a profit point of view, marginal businesses are forced to assume an economic burden which cannot help but cause a great number of them to fail, the City of Chicago should be required to show something more than this. The petitioners respectfully request this Court to afford them relief to which they are clearly entitled and which they are unable to obtain anywhere else.

Petitioners pray that this Honorable Court may grant the Petition for Writ of Certiorari and may review the determination of the Supreme Court of the State of Illinois, and upon review may reverse the decision of that Court as being in violation of the Constitution of the United States.

Respectfully submitted,

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APPENDIX A.

Sections 145-24.1 through 145-24.6 of the Municipal Code of Chicago, adopted on July 28, 1961, are as follows:

Be It Ordained by the City Council of the City of Chicago:

SECTION 1. Chapter 145 of the Municipal Code of Chicago entitled "Laundries and Laundry Vehicles" is amended by inserting the following new sections in their proper numerical sequence:

Self-Service Coin-Operated Laundry Establishments

145-24.1. Compliance.) Laundry establishments commonly know as self-service coin-operated shall comply with section 81-7, the general applicable provisions of chapter 99, and the provisions of the Chicago Zoning Ordinance.

145-24.2. Attendant.) There shall be present in every self-service coin-operated establishment of this type an attendant between the hours of 6:00 P. M. and 11:30 P. M.

145-24.3. Certificate of fitness.) No person shall act as an attendant in any such laundry establishment, unless he shall be the holder of a certificate of fitness issued by the division marshal in charge of the bureau of fire prevention and the commissioner of health. Before the issuance of any such certificate, the division marshal in charge of the bureau of fire prevention and the commissioner of health shall examine the applicant as to his qualifications to fill such position. To receive a certificate of fitness the applicant must:

(a) be a citizen of the United States;

(b) be of legal age, temperate habits and good moral character;

(c) be able to speak and understand the English language;

(d) produce evidence of his employment or occupation and residence for the previous 2 years;

(e) be familiar with the operation of the machines in the establishment; and

(f) be familiar with risks incident to the operation of the machines and capable of taking the necessary precautions.

The annual fee for the issuance or renewal of any such certificate shall be twelve dollars and shall be paid to the city collector.

Where a self-service coin-operated dry cleaning establishment and a self-service coin-operated laundry establishment are operated on the same premises only one attendant, who is the holder of a certificate of fitness issued pursuant to section 121-13.3 of this code, shall be required.

145-24.4. Plans.) Any person establishing a laundry of the coin-operated self-service type shall be required to submit to the commissioner of buildings for his approval a complete set of plans and specifications of the building in which such establishment is to be located and also a complete diagram of the floor plan of each room to be occupied by such establishment, showing the arrangement or setting of all machinery and equipment to be installed therein. Each such plan shall be explicit and complete.

145-24.5. Hours of operation.) No coin-operated self-service laundry now or hereafter established shall be operated between the hours of 11:30 P. M. and 6:30 A. M.

145-24.6. Fees.) The annual license fee for each self-service coin-operated laundry establishment is hereby fixed as follows: $150.00 for each establishment having fifteen or less self-service coin-operated machines and $5.00 for each machine in excess of fifteen machines maintained upon the premises.

SECTION 2. The last paragraph in Section 145-4 is hereby repealed.

SECTION 3. This ordinance shall become effective September 1, 1961; provided, however, that persons licensed prior to that date shall not be required to pay any further fee for the year 1961 and persons licensed subsequent to effective date hereof shall pay one-third of the fees prescribed herein for the balance of the year 1961.

Amendments to Section 145-24.3 and 145-24.4, adopted April 17, 1964, are as follows:

Be It Ordained by the City Council of the City of Chicago:

SECTION 1. Section 145-24.3 of the Municipal Code of Chicago is amended by striking out subparagraphs (a), (b), (c), (d), (e) and (f) and substituting in lieu thereof the following:

(a) be of legal age, temperate habits and good moral character;

(b) be able to speak and understand the English language;

(c) produce evidence of his employment or occupation and residence for the previous 2 years;

(d) be familiar with the operation of the machines in the establishment; and

(e) be familiar with risks incident to the operation of the machines and capable of taking the necessary precautions.

Also by striking out the sentence following said group of subparagraphs and substituting therefor the following:

Upon compliance with the above and payment to the City Collector of an annual fee of $12.00 for the issuance or renewal of any such certificate, such certificate shall be issued to the applicant.

SECTION 2. Section 145-24.4 of said Code is amended to read as follows:

Any person establishing a laundry of the coin-operated self-service type shall be required to submit to the

commissioner of buildings for his approval a complete set of plans and specifications and a complete diagram of the floor plan of each room to be occupied by such establishment, showing the arrangement or setting of all machinery and equipment to be installed therein. Each such plan shall be explicit and complete.

SECTION 3. This ordinance shall become effective upon its passage and due publication.

APPENDIX B.

Copy of the Opinion and the Judgment below, entered January 25, 1966 (R. 20).

Docket No. 38832—Agenda 26—September, 1965.

Mildred Gibbons *et al.*, Appellees, v. The City of Chicago, Appellant.

Mr. JUSTICE SCHAEFER delivered the opinion of the court:

The plaintiffs, who are owners or operators of self-service, coin-operated laundries in the City of Chicago, brought this action to enjoin the enforcement of the City's ordinance relating to "Self-service Coin-operated Laundry Establishments" upon the ground that the ordinance violates the constitutions of the United States and of the State of Illinois. A temporary injunction restraining the enforcement of the ordinance was issued and the case was referred to a master in chancery. Pending final determination, the plaintiffs were ordered to deposit the fees required by the ordinance with the clerk of the court. Funds in excess of $200,000 were so deposited.

The ordinance became effective September 1, 1961, and the present action was commenced shortly thereafter. The ordinance requires that an attendant be present in every self-service, coin-operated laundry establishment between the hours of 6:00 P.M. and 11:30 P.M., and it provides that no "coin-operated self-service laundry, now or hereafter established, shall be operated between the hours of 11:30 P.M. and 6:30 A.M." The annual license fee is fixed at $150 per establishment, plus $5 per machine in excess of 15 machines. The ordinance requires that each attendant

obtain, from the division marshal in charge of the bureau of fire prevention and the commissioner of health, a "certificate of fitness" issued in accordance with standards set out in the ordinance. As originally enacted it required that any person establishing such a laundry submit, for the approval of the commissioner of buildings, a complete set of plans and specifications of the building containing the proposed laundry, and also a complete floor plan of the proposed laundry.

Lengthy hearings were conducted before the master, who found that the basic provisions of the ordinance—the compulsory closing requirement and the provision that required an attendant during certain hours—were valid. He also found, however, that the provision concerning the issuance of certificates of fitness to attendants conferred arbitrary power upon the division fire marshals and the commissioner of health, and that the provision requiring submission of plans was unreasonable insofar as it required an applicant to furnish plans for the entire building in which the laundromat is located.

After the master made his report, the city council amended the ordinance in an attempt to meet his objections, but the trial judge refused to consider these amendments when they were offered in evidence before the decree was entered. His decree held that the ordinance "gives the Division Fire Marshal and the Commissioner of Health uncontrolled and arbitrary discretion whether or not to issue such a Certificate" of fitness, and that the provision requiring the submission of plans and specifications for the entire building, "is an unreasonable burden on the prospective owner," and that both of these provisions were unconstitutional. He also considered that the provision requiring an attendant during specified hours was "dependent" on the standards for qualification of an attendant, and so held

that provision invalid also. The decree directed the clerk to return the funds on deposit to the plaintiffs.

We consider first the propriety of the trial judge's refusal to admit in evidence and consider the amendments to the ordinance, and the consequences of that refusal. To justify the action of the trial judge the plaintiffs rely upon *Trzebiatowski* v. *Jerome*, 24 Ill. 2d 24, and other cases which hold that "[T]he full hearing required by due process of law contemplates that all of the evidence should be submitted before a single judge, master or other tribunal which could see the witnesses, weigh their testimony and determine their credibility." (*People ex. rel. Reiter* v. *Lupe*, 405 Ill. 66, 71.) But this doctrine relates to testimonial and other evidentiary matters as to which the observations of the trier of the fact are significant, and not when the new matter sought to be put before the court is a change in the governing law.

While we hold, therefore, that the trial court erred in refusing to consider the ordinance as it existed when the case was decided, it does not follow, as the city suggests, that the provisions of the ordinance as it was originally enacted had become moot. A substantial sum, representing license fees under the original ordinance, had been deposited in accordance with the order of the court, and the disposition of those funds depended on the validity of that ordinance. The voluminous testimony related to all of the provisions of the ordinance. Both parties have argued the validity of the ordinance as amended, and we shall consider its validity, both as it now exists and in its original form.

Among the relevant powers delegated to municipalities is the power to "regulate the use and construction of * * * laundries, * * *" (Ill. Rev. Stat. 1965, chap. 24, par. 11—42—8), and the authority of the city to enact a licensing ordinance is not questioned. The main thrust of

the plaintiffs' challenge to the validity of this ordinance is directed at its two principal provisions: first, the requirement that an attendant be present at all self-service, coin-operated laundries between the hours of 6:00 P.M. and 11:30 P.M., and second, the provision which prohibits the operation of coin-operated, self-service laundries between the hours of 11:30 P.M. and 6:30 A.M. It is contended that neither of these provisions bears any reasonable relation to public health, safety or welfare.

The record shows that there are about 600 self-service, coin-operated laundry establishments in the city of Chicago. Approximately 90 per cent of them do not have an attendant in regular service during any portion of the day. The operation of the washers and dryers is similar to those found in noncommercial settings, and there was testimony that for this reason there is no need for an attendant to give special instructions. There was also testimony that persons who use the machines do not like to have anyone see their dirty laundry. Of the forty owners or operators who testified, over three-fourths hired part-time porters and contracted for maintenance work, and so have not found it necessary to employ an attendant for any part of the day. A fair summary of the testimony is that those engaged in the business consider an attendant to be more of a detriment than an asset, because the business function he would serve is already adequately performed, and because the customers would be annoyed by the possibility of an attendant's examination of dirty clothing. It appears that the busiest period of the day for these laundries is usually between 6:00 P.M. and 12:00 P.M., and, although there are no very accurate figures, it also appears that about 20 per cent of the business of those laundries which remain open 24 hours a day is done between the hours of midnight and 7:00 A.M. Most of the customers are women.

There appear to be few instances of either fires or personal injuries due to negligence or accident in these establishments, and there has been no difference between attended and unattended laundries in the rates for insurance against fire and personal injury risks. (See, however, *Schacht* v. *City of New York*, 243 N. Y. S. 2d 272, 279, (1963).) A representative of the Chicago Fire Department testified that there had been fires relating to washers or dryers in such establishments, all of which were contained in the machines. He testified, however, to the great value an attendant would have in curtailing the risks of fire. The main danger of fire appears to derive from failure to remove lint from the dryers or from placing improper materials into them. The main risks of personal injury derive from the fact that some of the machines continue spinning when they are opened while in use. There was also testimony by a manufacturer of driers that he had heard that children climbed inside the machines to see who could stay longest. Some washers have overflowed on occasion, with the consequent risk of injury and, if a wire is frayed or cut, of electrocution. But there was no testimony that any incidents of the latter sort had occurred. Laundry operators testified that there were few overflows, and that the risks relating to maintenance of the machines were cared for adequately by existing maintenance practices.

If the water is maintained at the proper temperature, a sterilizing effect is achieved. But there was testimony that disease might be communicated if the proper temperature is not maintained or an overload of clothing is placed in the machines. Although the weights of the load limits are announced on the machines, instances of overloading undoubtedly occur. The risks involved here are constant, and the requirement of an attendant during peak business hours appears both reasonably related to those risks and reasonably adapted to curtail them. It seems fair to summarize

that attendants during the peak business hours of 6:00 P.M. to 11:30 P.M. would perform few positive business functions other than checking equipment, preventing overloads or the insertion of improper materials, cleaning the premises and changing money if there is no automatic changer, most of which functions are currently performed to the satisfaction of the operators. But attendants would serve some functions not presently served, for their presence on the premises during the peak business hours, at night, would afford constant assistance and would tend to assure proper use of the machines during those hours.

We need not determine whether the matters thus far discussed, which relate to considerations of public health and the risks of fire and personal injuries, would be sufficient, standing alone, to justify the requirement that an attendant be present when the establishment is open at night. For we are of the opinion that when they are considered in conjunction with considerations related to the deterrence of crime and criminal activity, both the requirement of an attendant and the compulsory closing provision of the ordinance are clearly justified.

Several representatives of the Chicago Police Department expressed the opinion, based upon their experience, training, background and knowledge, that the presence of an attendant between the hours of 6:00 P.M. and 11:30 P.M. would have a deterrent effect on crimes related to self-service, coin-operated laundries. Reports compiled by the Chicago Police Department show that the peak period of reported crime for this type of laundry increases sharply about 5:00 P.M., reaches a peak sometime after midnight, and decreases sharply after 4:30 A.M. This period correlates with that during which the presence of an attendant and compulsory closing are required under the ordinance. There was testimony of numerous incidents of crime of varying degrees of seriousness in connection with these

laundries. Police officers testified that any warm, well-lighted place would contribute to certain types of crime, but that open, unattended laundries are almost unique in their attractiveness. It was the opinion of the police officers who testified that the incidence of larcenies of coins from the machines would decrease significantly as a result of the attendant and closing requirements. Certain types of prevalent sex crimes, such as indecent liberties and exhibitionism, would also decrease and the danger of rape or similar violent sexual assault on unescorted women would be reduced.

Over one-half of all police activity in regard to self-service laundries relates to the congregation of juveniles at night. Plaintiffs make much of the fact that this conduct is not in itself criminal. But it is nonetheless a large and important area of legitimate police activity.

Plaintiffs also argue that the requirement of an attendant will increase the incidence of certain types of crimes, such as sex exhibitionism, by guaranteeing a spectator, and that the closing requirement will increase the incidence of burglary. But the choice of deterrence of one type of crime at the expense of an increase in another involves a typical legislative judgment. We are satisfied upon this record that the attendant and compulsory closing provisions of the ordinance are neither arbitrary nor unreasonable (see *Kaukas* v. *City of Chicago,* 27 Ill. 2d 197, 201-203; *Queenside Hills Realty Co.* v. *Saxl,* 328 U. S. 80, 90 L. Ed. 1096, 66 S. Ct. 850), and that they do not violate the constitution of Illinois or the constitution of the United States.

The trial court's determination that the entire ordinance was invalid rested upon his conclusion that the requirement that an attendant secure a certificate of fitness "gives the Division Fire Marshal and the Commissioner of Health uncontrolled and arbitrary discretion whether or not to issue such a Certificate, and is invalid, excessive, arbitrary, un-

necessary, capricious and unreasonable * * *." We do not agree with this conclusion. As originally enacted the pertinent section read: "No person shall act as an attendant in any such laundry establishment, unless he shall be the holder of a certificate of fitness issued by the division marshal in charge of the bureau of fire prevention and the commissioner of health. Before the issuance of any such certificate, the division marshal in charge of the bureau of fire prevention, and the commissioner of health, shall examine the applicant as to his qualification to fill such position. To receive a certificate of fitness, the applicant must: (a) be a citizen of the United States; (b) be of legal age, temperate habits and good moral character; (c) be able to speak and understand the English language; (d) produce evidence of his employment or occupation and residence for the previous 2 years; (e) be familiar with the operation of the machines in the establishment; and (f) be familiar with the risks incident to the operation of the machines, and capable to taking the necessary precautions."

Plaintiffs do not challenge the reasonableness and appropriateness of these standards. Rather they argue that even if an applicant satisfies the standards set out in the ordinance, the fire marshal and health commissioner nevertheless have discretion under the ordinance to deny a certificate. The language of the ordinance does not explicitly grant any such arbitrary discretion to these officers, and we see no reason to read such a provision into it. As we pointed out in *Pliakos* v. *Liquor Control Com.* 11 Ill. 2d 456, 459, "* * * the courts start with the assumption that the legislature intended to enact an effective law, and the legislature is not to be presumed to have done a vain thing in the enactment of a statute." The cases plaintiffs cite are inapposite. Insofar as *City of Rockford* v. *Hey*, 366 Ill. 526, 534-35, held invalid an ordinance which provided that the commissioner of health should recommend the issuance of

a license "if *satisfied* with the condition of the premises," it was in effect overruled by *Toplis and Harding, Inc.* v. *Murphy,* 384 Ill. 463, 468-73. (See also, *City of Chicago* v. *Ben Alpert, Inc.* 368 Ill. 282, 287-88; *City of Chicago* v. *The R. & X. Restaurant,* 369 Ill. 65, 71-73.) In *Dean Milk Co.* v. *City of Aurora,* 404 Ill. 331, 336, the ordinance in question did not specify the circumstances under which approval of an application for a license was to be given, "but purports to vest in the designated officers wide discretion to give or withhold their approval." And in *People ex rel. Schimpff* v. *Norvell,* 368 Ill. 325, 327, the ordinance prescribed "no conditions or terms upon which the commissioner of buildings is to determine what shall be an 'officially approved place.' "

The trial judge also held invalid the provision of the original ordinance which required an applicant for a license to submit for inspection and approval the plans and specifications for the entire building in which the proposed laundry was to be housed. This requirement was eliminated by the amendments to the ordinance. We do not find it necessary to pass on the validity of the original provision, for we are of the opinion that even if it was invalid, it was separable. The reasonableness of the requirement that plans for the laundromat itself be submitted is not disputed. The ordinance was capable of being fully executed without the disputed provision, and we can not say that the city council would not have adopted the ordinance without it. *People ex rel. Adamowski* v. *Wilson,* 20 Ill. 2d 568, 582.

Plaintiffs also attack the annual license fee of $150 for "each establishment having 15 or less self-service coin-operated machines, and $5 for each machine in excess of 15 machines maintained upon the premises," as well as the annual fee of $12 for an attendant's certificate of fitness. We find no evidence in the record to show that these fees are not reasonably related to the burdens placed upon the city

because of the regulatory provisions of the ordinance. And in the absence of proof to the contrary, it is presumed that a reasonable relationship exists between the required fee and costs of regulation. *City of Chicago* v. *Schall,* 2 Ill. 2d 90, 91.

The ordinance, as originally enacted, and as amended, is not invalid. The judgment of the circuit court is therefore reversed, and the cause is remanded to that court for the entry of a decree in accordance with this opinion.

REVERSED AND REMANDED, WITH DIRECTIONS.

Office-Supreme Court, U.S.
FILED
JUL 16 1966
JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1966.

No. 260

MILDRED GIBBONS, NAPOLEON C. ZBYSZEWSKI, AILEEN BIEL, IDA JACOBSON, GEORGE PAPANTONATOS, LEON PERMAN, HYMAN M. STEIN, ALLEN KLEIN, KUNIO SHIMIZO, ET AL.,
Petitioners,

CITY OF CHICAGO, A MUNICIPAL CORPORATION,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF ILLINOIS.

RESPONDENT'S BRIEF IN OPPOSITION.

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THE GUNTHORP-WARREN PRINTING COMPANY, CHICAGO 58

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ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF ILLINOIS.

RESPONDENT'S BRIEF IN OPPOSITION.

Opinion of the Supreme Court of the State of Illinois.

The opinion of the Supreme Court of the State of Illinois herein has been reported in 34 Ill. 2d 102 and in 214 N. E. 2d 70.

Statutes and Ordinances.

The statutory provisions involved have been set forth as Appendix A and the ordinance provisions involved have been set forth as Appendix B, both located at the back of this brief (hereinafter referred to as "App."). Said provisions are cited in the following list:

Illinois Revised Statutes 1965, Chapter 24, paragraphs 1-2-1, 11-1-1, 11-5-2, 11-8-2, 11-16-1, 11-20-5, 11-30-4, 11-42-8, 11-60-1.

Municipal Code of Chicago 1939, as amended to January 1, 1966, Chapter 145, Sections 145-24.1 through 145-24.6.

References to the Record.

The Abstract of Record filed in the Illinois Supreme Court has been designated by the Clerk of that Court as "Record 26." Therefore, reference to the record contained in said abstract shall be set forth as "Rec. 26," followed by the page in the abstract to which said reference is made.

Questions Presented.

Do regulatory ordinance provisions, founded upon statutory provisions, requiring self-service, coin-operated laundry operators to comply with the city's heating and ventilating code, nuisance code and zoning code; to have an attendant, meeting with certain standards of fitness, on the premises between the hours of 6:00 p.m. and 11:30 p.m.; to close such establishments between 11:30 p.m. to 6:30 a.m.; to submit floor plans of said establishments to the city building department; and to pay a graduated license fee based upon the number of machines installed on the premises, offend Amendments V and XIV of the United States Constitution?

(It must be noted that the ordinance provisions do not require attendants in self-service, coin-operated laundries "during *all* open hours" as stated in petitioners' "Questions Presented" (Petitioners' Brief, pp. 3-4), nor has any issue been raised concerning the desirability of requiring attendants for those establishments seeking to remain open after 11:30 p.m., as stated in petitioners' "Questions Presented" (Petitioners' Brief, p. 4).)

Statement of the Case.

As reproduced in Appendix B of this brief (App. iii-vi), Sections 145-24.1 through 145-24.6 set forth a comprehensive regulatory ordinance concerning the establishment and

use of self-service, coin-operated laundries. Section 145-24.1 requires that self-service, coin-operated laundry establishments comply with the city's ventilating code, that such establishments be maintained so as not to run afoul of the nuisance code of the city, and that they comply with the zoning code of the city. Section 145-24.2 requires that an attendant, *i.e.*, responsible person, be on the premises of self-service, coin-operated laundries during certain hours of operation, namely, between 6:00 p.m. and 11:30 p.m. Section 145-24.3, as amended on April 17, 1964, sets forth certain qualifications which an attendant must possess, said qualifications to be passed upon by the division marshal in charge of the bureau of fire prevention and the commissioner of health, who shall issue a certificate of fitness, with an annual fee established for the issuance or renewal of such a certificate. Section 145-24.4, as amended on April 17, 1964, requires any person establishing a self-service, coin-operated laundry to present plans, specifications and a diagram of the portion of the building in which the proposed laundry establishment is to be located to the commissioner of buildings. Section 145-24.5 provides that no self-service, coin-operated laundry shall be operated between the hours of 11:30 p.m. and 6:30 a.m. Section 145-24.6 provides for an annual license fee graduated in accordance with the number of machines to be installed in self-service, coin-operated laundry establishments.

Petitioners initiated this action against defendant City of Chicago, seeking to set aside Sections 145-24.1 through 145-24.6, alleging that the power to regulate or license self-service, coin-operated laundry establishments had not been conferred upon the City of Chicago by the State Legislature, that said ordinances deprived petitioners of due process of law and of equal protection of the laws (Rec. 26, p. 7), and that said provisions were arbitrary, unreasonable, confiscatory and void, bearing no reasonable relationship

to the public health, welfare or safety (Rec. 26, p. 8). These allegations were denied by respondent (Rec. 26, pp. 23-26). The cause was referred to a Master in Chancery following the entry of a temporary injunction and the Master heard the evidence offered by the parties and filed his report on January 3, 1964 (Rec. 26, p. 30), concluding that the city had the authority to pass the ordinance in question for the regulation of the industry; that it was a necessary ordinance; and that certain provisions in the ordinance were excessive and should be set aside, nevertheless holding that they could be separated from those which were reasonable (Rec. 26, p. 93).

As previously noted, on April 17, 1964, the City Council amended Sections 145-24.3 and 145-24.4 (App. v-vi), said amendments having been designed to meet the Master's objections, which the Chancellor refused to consider prior to entry of the decree (Rec. 26, pp. 105-11), on May 5, 1964 (Rec. 26, p. 97). The Court held that the entire ordinance passed on July 28, 1961 (Sections 145-24.1 through 145-24.6) was void, invalid, unenforceable, beyond respondent's delegated authority and unconstitutional, and permanently enjoined its enforcement (Rec. 26, p. 102).

In support of those ordinance provisions requiring the presence of an attendant during certain hours, to which petitioners make particular reference (Petitioners' Brief, p. 5), the evidence revealed that the requirement of having a responsible person on such premises between 6:00 p.m. and 11:30 p.m. coincided with the busiest hours of operation in self-service, coin-operated laundries (Rec. 26, p. 431), and that those same busy hours also coincided with the hours of peak criminal activity within the City of Chicago at which times the presence of such a responsible person would operate as a deterrent to crime in said laundry establishments (Rec. 26, pp. 440, 441, 458, 459, 467, 468, 539, 541, 556, 563).

The evidence showed further that an attendant would supervise the activities of persons on the premises during those busiest times; would be acquainted with the workings of the machinery; would have some basic knowledge of good housekeeping, thereby nullifying the chance of fire; and would be a person to watch over the premises and the occupants and prevent anything that might occur on those premises that would lead to the jeopardy of the occupants or the building itself which may house apartments or other property uses (Rec. 26, p. 499). Self-service, coin-operated laundries have experienced a number of fires in the City of Chicago (Rec. 26, pp. 206, 247, 248, 249, 270, 295, 323, 333, 337, 367, 370, 379, 381, 401, 414, 576).

An attendant could also eliminate accumulations of water, soap and other debris on the floor (Rec. 26, pp. 533, 593, 594), caused in part by overflowing washing machines (Rec. 26, pp. 180, 190, 217, 224, 269, 270, 271, 307, 323, 349, 364, 383, 389 440, 592). The presence of a properly instructed attendant in self-service, coin-operated laundry establishments would also insure the maintenance of hygienic and sanitary conditions in such establishments as well as to maintain compliance with the ventilation requirements of the Municipal Code of Chicago, particularly where, as in such places of business, gas used for heating is being piped into the premises and where an accumulation of moisture and humidity is to be found (Rec. 26, p. 515).

The Supreme Court of Illinois took cognizance of the fact that there were positive functions to be served by requiring attendants to be on the premises of self-service, coin-operated laundries during their busiest hours in the evening, as required by Section 145-24.2. 34 Ill. 2d 102, 106-08. The Court went on to say that when those positive functions of an attendant relating to considerations of public health, risks of fire and personal injuries are considered *in conjunction* with the deterrence of crime and criminal

activity, both the requirement of an attendant and the closing provision of the ordinance were clearly justified.

The correlation between the deterrence of crime and criminal activity and the presence of attendants during the busiest hours of business in self-service, coin-operated laundries, which also coincide with the peak hours of criminal activity in the City of Chicago (Rec. 26, pp. 441, 467, 539, 556, 563) is demonstrated by the record. With respect to murders involving attendants in self-service, coin-operated laundries (Rec. 26, pp. 472, 541, 559), there is no suggestion or intimation that the persons involved could have qualified as an attendant under Section 145-24.3 of the subject ordinance (App. v), and, in fact, they could have been any person who happened on the premises, such as a janitor or maintenance man (Rec. 26, pp. 445, 451) or a local drifter about whom the operators knew little and cared less (Rec. 26, pp. 578, 580, 582), thereby underscoring the need for appropriate regulation.

It was the considered opinion of expert police witnesses that crimes of larceny would decrease if an attendant were present during the busiest hours of self-service, coin-operated laundry operations, and that an attendant would serve to decrease and deter sex crimes, such as rape, indecent liberties and indecent exposure (Rec. 26, p. 458). The presence of an attendant would also have a deterrent effect upon crimes of murder and robbery, because criminals are less likely to enter such establishments and attempt crimes of this nature where attendants could witness them (Rec. 26, p. 468).

The record shows that women frequently patronize laundromats alone at night and are likely objects for persons bent upon committing sex crimes (Rec. 26, pp. 455, 458, 469, 471, 482, 544, 547, 551-2, 564). Petitioners' assertion that no case of molestation of women occurred at or near self-service, coin-operated laundries (Petitioners' Brief,

p. 7), is belied by the record (Rec. 26, pp. 481, 544, 564). The record also shows an incidence of indecent exposure cases in and about self-service, coin-operated laundries (Rec. 26, pp. 479, 480, 481).

Regarding crimes connected with narcotics in self-service, coin-operated laundries, such establishments have served as gathering places for young people who, seeking to get out of the weather and into warm, well-lighted surroundings where they won't be bothered, have used self-service, coin-operated laundries for "goof-ball" parties. A "goof-ball" is a barbiturate taken orally together with carbonated drinks, which are available in laundromats (Rec. 26, pp. 540, 542). The use of so-called "goof-balls" produces an effect upon the human nervous system as obnoxious as the use of narcotics.

The assertion in petitioners' "Statement of Case" that at least seventy-five percent of the matters set out in the police reports were routine reports of incidents, such as juveniles congregating, which do not constitute crimes at all (Petitioners' Brief, p. 7), omits to advise this Court that the witness used the word "crime" only as related to those cases involving violations of the Criminal Code of Illinois and that the incidents referred to were such violations of city ordinances as required police action (Rec. 26, pp. 458-59).

With respect to petitioners' anticipated increase in the number of burglaries occurring in self-service, coin-operated laundries which would be closed between the hours of 11:00 p.m. and 6:30 a.m., the record shows that self-service, coin-operated laundries are not attractive to burglars (Rec. 26, pp. 566-67). Burglary, in such establishments, in the sense of breaking in from the outside, is very low for the reason that it would be a much more serious offense to pry open the door of the establishment than to break a coin receptacle, the probable proceeds of

which would be minimal in view of the risk (Rec. 26, pp. 545-46). Burglaries are less likely in self-service, coin-operated laundries which are locked and dark because to a thinking burglar, it could be logically assumed that the operator would take home with him the proceeds of the day (Rec. 26, pp. 473-74). The Illinois Supreme Court held that the choice of deterrence of one type of crime at the expense of an increase in another involved a typical legislative judgment, 34 Ill. 2d 102, 109.

Reasons for Denying the Writ.

A. Factual determinations involving conflicts in testimony and other evidence are not properly before this Court.

The main thrust of petitioners' argument, under their "Reasons for Granting the Writ," is their dissatisfaction with the resolution of factual issues by the Master in Chancery and the Illinois Supreme Court. They devote eight of the eleven pages of their argument to analysis and reargument of the facts. (Petitioners' Brief, pp. 8-16.)

This Court has many times held that the place to resolve conflicts in testimony and an interpretation thereof is in the State Court, not in the United States Supreme Court. In *Milkwagon Drivers Union* v. *Meadowmoor Dairies, Inc.*, 312 U. S. 287, the Court addressed itself to similar circumstances, stating 312 U. S. at 294):

> "It is not for us to make an independent evaluation of the testimony before the master. We have not only his findings but his findings authenticated by the state of Illinois speaking through her supreme court. We can reject such a determination only if we can say that it is so without warrant as to be a palpable evasion of the constitutional guaranty here invoked. The place to resolve conflicts in the testimony and in its interpretation was in the Illinois courts and not here. To substitute our judgment for that of the state court is to transcend the limits of our authority."

See also, *Norton Co.* v. *Department of Revenue of Illinois,* 340 U. S. 534, 538; *Merchants' Nat'l Bank* v. *Richmond,* 256 U. S. 635, 638; *Carlson* v. *Curtiss,* 234 U. S. 103, 106. An examination of the testimony in the record, as heretofore set forth in the preceding "Statement of the Case," demonstrates that the findings of fact as posited by the Illinois Supreme Court are well supported by substantial evidence.

As this Court has indicated, therefore, a review of factual issues is not a proper basis for granting a writ of certiorari and respondent respectfully suggests that the petition be denied.

B. The Illinois Supreme Court's determination upholding the validity and constitutionality of the ordinance regulating self-service, coin-operated laundries is well supported in law and in fact.

The authority to regulate laundries has been delegated directly, as well as impliedly, by the Illinois Legislature to municipalities, as demonstrated by the collation of statutory grants of power relating to this subject set forth in Appendix A hereof (Ill. Rev. Stat. 1965, ch. 24, pars. 1-2-1, 11-1-1, 11-5-2, 11-8-2, 11-16-1, 11-20-5, 11-30-4, 11-42-8, 11-60-1) (App. i-ii). Having proceeded from legislative authority, the rule obtains that there is a presumption favoring the validity of the ordinance. *City of Decatur* v. *Chasteen,* 19 Ill. 2d 204, 210, 166 N.E. 2d 29.

The question of whether there is any connection between the ordinance provisions under attack and the police power exercised thereby, and the question of whether the ordinance is a reasonable exercise of that police power, is primarily a matter for legislative determination which will not be disturbed by the courts unless there is a palpably arbitrary exercise of said power. *Schuringa* v. *City of*

Chicago, 30 Ill. 2d 504, 509, 198 N.E. 2d 526. The ordinance provisions need not be scientific, logical or consistent, but need only have a reasonable basis when considered with reference to the purpose of the Legislature. *City of Chicago* v. *Miller,* 27 Ill. 2d 211, 220, 188 N.E. 2d 694, *cert. denied,* 375 U. S. 11. The judicial function in this respect is exhausted with the discovery that the relation between the means and the end is not wholly vain and fanciful or an illusory pretense. *Williams* v. *Mayor and City Council of Baltimore,* 289 U. S. 36, 42.

This Court has recently announced that it has returned to the original constitutional proposition that courts will not substitute their social and economic beliefs for the judgment of legislative bodies which are elected to pass laws. In *Ferguson* v. *Skrupa,* 372 U. S. 726, this Court, quoting from *Olsen* v. *Nebraska,* 313 U. S. 236, 246; *Sproles* v. *Binford,* 286 U. S. 374, 388; and *Lincoln Federal Labor Union, A.F.L.* v. *Northwestern Iron & Metal Co.,* 335 U. S. 525, 536, reaffirmed the principles enunciated in those cases, stating (372 U. S. at 730-31):

> " 'We are not concerned . . . with the wisdom, need, or appropriateness of the legislation.' Legislative bodies have broad scope to experiment with economic problems, and this Court does not sit to 'subject the State to an intolerable supervision hostile to the basic principles of our Government and wholly beyond the protection which the general clause of the Fourteenth Amendment was intended to secure.' It is now settled that States 'have power to legislate against what are found to be injurious practices in their internal commercial and business affairs, so long as their laws do not run afoul of some specific federal constitutional prohibition, or of some valid federal law.' "

Petitioners nevertheless ask this Court to act as a super-legislature, to weigh the wisdom of legislation which, in the *Skrupa* case, this Court said it would emphatically refuse to do. 372 U. S. at 731.

The question of whether there is a reasonable relationship between the ordinance regulating self-service, coin-operated laundries and the traditional objectives of the police power has been decided in favor of the validity and constitutionality of the ordinance by the Illinois Supreme Court. The abstract of record considered by the Illinois Supreme Court is voluminous, containing 599 pages (Rec. 26). The abstract contains testimony of thirty-five witnesses who testified for petitioners, nine witnesses who testified for respondent, in addition to references to six petitioners' exhibits and three respondent's exhibits. The conflict in testimony and other evidence has been resolved by the Illinois Supreme Court in favor of the validity of the ordinance and petitioners' discussion under its "Reasons for Granting the Writ" is no more than a rehash and reargument of that evidence. Nevertheless, respondent will answer various contentions made so that this Court may not be misled thereby.

Petitioners seek mileage from an alleged financial impact said to be caused by the subject ordinance on the business sought to be regulated, the attempt being made to show that theirs are nickel and dime businesses, barely functioning day to day, with imminent loss to themselves and the entire community of the valuable services they are said to render. The record shows, however, that petitioners' type of business, even *without* application of the ordinance regulations at issue, results in such varying circumstances as from three to five such laundry stores closing each week because their owners cannot pay their bills (Rec. 26, p. 428) to those establishments returning to their owners as much of a profit as approximately $10,000 per year (Rec. 26, pp. 171-72). Among the factors bearing upon whether a self-service, coin-operated laundry store will make or lose money is the nature of the neighborhood in which it is located (Rec. 26, pp. 240, 282, 395), the

amount of competition encountered in that particular neighborhood (Rec. 26, pp. 154, 228, 236, 282, 283, 292, 298, 311, 372, 394, 428), the age of the store and the type and maintenance of equipment (Rec. 26, pp. 236, 282, 394), as well as the business practices of the individual entrepreneur (Rec. 26, p. 236). One such operator was frank to admit that he wished to sell his stores because they do not yield sufficient returns on the investment, including stores which show a considerable profit, and that the ordinance provisions under attack had no bearing on this decision which he had made several months prior to passage of the ordinance (Rec. 26, p. 241). A representative of one of the largest laundry equipment suppliers in the industry testified that the new ordinance would have no effect upon his business and that his customers could still make a reasonable profit on their businesses (Rec. 26, p. 291).

The record thus demonstrates that the issue of how the ordinance provisions will affect this industry is enigmatic, to say the least. Notwithstanding the probability of some adverse effect, the fact alone that the ordinance may operate to impose burdens or restrictions on property which would not have existed without the enactment of this provision is not determinative of the question of its validity. *Goldblatt* v. *Town of Hempstead,* 369 U. S. 590; *Kaukas* v. *City of Chicago,* 27 Ill. 2d 197, 203, 188 N. E. 2d 700, *cert. denied,* 375 U. S. 8.

Petitioners assert that no regulation is needed due to the danger of fires or personal injuries, quoting, out of context, a so-called concession to that effect by the Supreme Court of Illinois (Petitioners' Brief, p. 10). Both the record and the Supreme Court opinion are in contradiction of that conclusion. The record shows that a variety of risks to patrons, other occupants of the building, and to property, exist with respect to the operation of machinery and other equipment in self-service, coin-operated laun-

dries, including shorting of electrical wiring and blowing of fuses (Rec. 26, p. 141), fires taking place in and about said machinery (Rec. 26, pp. 194, 201, 203, 206, 247, 248, 249, 270, 295, 323, 333, 337, 367, 370, 379, 381, 401, 414, 576), clogging of machinery (Rec. 26, pp. 216-17), breaking of machine parts accessible to the public (Rec. 26, pp. 249-50, 369), burning out of electrical motors and other electrical equipment (Rec. 26, pp. 369-70), overflowing of water from machines onto the floors (Rec. 26, pp. 180, 190, 217, 224, 269, 270, 271, 307, 323, 349, 364, 383, 389, 430, 530, 592), and malfunctioning of ventilating equipment (Rec. 26, p. 519).

One of respondent's witnesses, Charles L. Pierce, Battalion Chief of the Fire Prevention Bureau of the Chicago Fire Department, stated, in this regard (Rec. 26, p. 507):

> "The point we are concerned about is that it is good fire prevention thinking to have somebody who will recognize a hazard once it starts and to eliminate it if possible, then call in somebody to rectify it.
> "If there is nobody in attendance and the motor is malfunctioning, there is nobody to notify an authority that the motor is malfunctioning, that it is sparking, arcing, or overheated, and so on, until such time as it either burns itself out or causes a fire, then the proper authorities are notified, namely, the owner of the premises. You would not need any particular special knowledge to recognize when the motor was malfunctioning; just be observing to see whether a motor is sparking or arcing, and if you have the God-given sense of smell you could smell a motor burning and you could smell the overheating of it and so on."

The Illinois Supreme Court opinion bears fully upon this point, as follows (34 Ill. 2d 102, 106-08):

> "There appear to be few instances of either fires or personal injuries due to negligence or accident in these establishments, and there has been no difference between attended and unattended laundries in the rates

for insurance against fire and personal injury risks. (See, however, *Schacht* v. *City of New York*, 243 N.Y.S. 2d 272, 279 (1963).) A representative of the Chicago Fire Department testified that there had been fires relating to washers or dryers in such establishments, all of which were contained in the machines. He testified, however, to the great value an attendant would have in curtailing the risks of fire. The main danger of fire appears to derive from failure to remove lint from the dryers or from placing improper materials into them. The main risks of personal injury derive from the fact that some of the machines continue spinning when they are opened while in use. There was also testimony by a manufacturer of driers that he had heard that children climbed inside the machines to see who could stay longest. Some washers have overflowed on occasion, with the consequent risk of injury and, if a wire is frayed or cut, of electrocution. But there was no testimony that any incidents of the latter sort had occurred. Laundry operators testified that there were few overflows, and that the risks relating to maintenance of the machines were cared for adequately by existing maintenance practices.

"If the water is maintained at the proper temperature, a sterilizing effect is achieved. But there was testimony that disease might be communicated if the proper temperature is not maintained or an overload of clothing is placed in the machines. Although the weights of the load limits are announced on the machines, instances of overloading undoubtedly occur. The risks involved here are constant, and the requirement of an attendant during peak business hours appears both reasonably related to those risks and reasonably adapted to curtail them. It seems fair to summarize that attendants during the peak business hours of 6:00 P.M. to 11:30 P.M. would perform few positive business functions other than checking equipment, preventing overloads or the insertion of improper materials, cleaning the premises and changing money if there is no automatic changer, most of which func-

> tions are currently performed to the satisfaction of the operators. But attendants would serve some functions not presently served, for their presence on the premises during the peak business hours, at night, would afford constant assistance and would tend to assure proper use of the machines during those hours."

Petitioners also take liberties with the record when they assert that virtually the only crimes committed in laundromats are instances of malicious mischief affecting only the owner of the premises (Petitioners' Brief, p. 11), and when they remove from context isolated statements of Police Captains and Commanders who testified with respect to crime incidents in their districts (Petitioners' Brief, pp. 12-13). Rather than to analyze the alleged testimony of each and every witness set forth in Petitioners' Brief, which would unduly lengthen and burden this response, a fair example of petitioners' editorial reporting may be observed by considering the testimony of the first witness, Captain James P. Hackett. Captain Hackett, at the time of his testimony, was Commander of the Shakespeare Avenue Police District, who had previously commanded the Task Force in backing up police districts on difficult crime problems, and had commanded four other police districts as well (Rec. 26, pp. 537-38). Upon examination of the record, his alleged statement that "there were no attacks on women in laundromats" (Petitioners' Brief, p. 12) reveals the following (Rec. 26, p. 541):

> "As Commander in my District, I would prefer to have this place with an attendant closed at 2:00 o'clock in the morning; I would prefer to have it closed as far as crime deterrence is concerned, because women are going in there at night and you are always worried somebody will grab one going home. They are open to public view. She is sitting in there. Once in a while we have an occasion where people wander in there and try to strike up an acquaintance with them, and they get ideas. We are always afraid some might

> be attacked going home at late hours. I have not had an incident in this District, *but I have heard of them in the past.* When we were downtown, as Deputy Chief, I watched all crime in the City because the crime [reports] came in to us, every report and on the air. *These types of incidents were reported in the past.*" (Emphasis supplied.)

Captain Hackett also made this statement (Rec. 26, p. 544):

> "One incident at 5900 South Paulina, I think that was the address, *we had a number of women going out of there attacked. We even had a special watch on it.* I think it was on South Ashland Avenue. These incidents occurred to the women after they left the laundromat." (Emphasis supplied.)

With respect to robberies, Captain Hackett testified (Rec. 26, 546):

> "*I know there have been robberies in laundromats,* but I cannot recall anyone in the district I commanded, right off-hand." (Emphasis supplied.)

Captain Hackett is alleged to have testified that the usual type of incident in a laundromat involved kids or drunks trying to get money out of coin receptacles (Petitioners' Brief, p. 12); however, the sentence preceding his comment reveals that this was not the usual incident in a laundromat, but the usual incident involving a *theft* in a laundromat, as follows (Rec. 26, p. 546):

> "The kind of episode that you would have *in a theft,* that you had in a laundromat, would be some kids trying to get $2.00 or $3.00 out of a coin receptacle, or a drunk, drunks hanging out in there who think they could get $2.00 or $3.00 or $10.00 or $15.00 easy. When they get in the coin receptacle we call that a larceny." (Emphasis supplied.)

Captain Hackett also stated, in this regard (Rec. 26, pp. 544-45):

> "In the laundromats, the machines are damaged; they get into their sealed closets; take the money. Most of the crimes are getting into the coin receptacles, into closets for supplies, stealing their supplies, damaging their machines; that is the most in the area I am in now and that is pretty regular."

A fair examination of the record would reveal similar circumstances with respect to the testimony given by each of the police witnesses as compared with the excerpts of their testimony set forth in petitioners' brief (Petitioners' brief, pp. 12-13).

Many of the incidents about which the police officers were examined were contained in a survey covering a limited period of time, from October, 1961 through January, 1962 (Rec. 26, p. 465). For that reason, the police officers, all of whom were in a position to know, testified with respect to their professional experience in addition to the incidents referred to in the survey, and said testimony was by no means in disregard of the record, as petitioners infer (Petitioners' Brief, p. 14). The Illinois Supreme Court opinion with respect to crime and activities requiring police supervision took into consideration the opinions of the police officers, based upon their experience, training, background and knowledge, stating (34 Ill. 2d 102, 108-09):

> "Several representatives of the Chicago Police Department expressed the opinion, based upon their experience, training, background and knowledge, that the presence of an attendant between the hours of 6:00 p.m. and 11:30 p.m. would have a deterrent effect on crimes related to self-service, coin-operated laundries. Reports compiled by the Chicago Police Department show that the peak period of reported crime for this type of laundry increases sharply about 5:00 p.m., reaches a peak sometime after midnight, and decreases sharply after 4:30 a.m. This period correlates with that during which the presence of an attendant and compulsory closing are required under the

ordinance. There was testimony of numerous incidents of crime of varying degrees of seriousness in connection with these laundries. Police officers testified that any warm, well-lighted place would contribute to certain types of crime, but that open, unattended laundries are almost unique in their attractiveness. It was the opinion of the police officers who testified that the incidence of larcenies of coins from the machines would decrease significantly as a result of the attendant and closing requirements. Certain types of prevalent sex crimes, such as indecent liberties and exhibitionism, would also decrease and the danger of rape or similar violent sexual assault on unescorted women would be reduced.

"Over one-half of all police activity in regard to self-service laundries relates to the congregation of juveniles at night. Plaintiffs make much of the fact that this conduct is not in itself criminal. But it is nonetheless a large and important area of legitimate police activity.

"Plaintiffs also argue that the requirements of an attendant will increase the incidence of certain types of crimes, such as sex exhibitionism, by guaranteeing a spectator, and that the closing requirement will increase the incidence of burglary. But the choice of deterrence of one type of crime at the expense of an increase in another involves a typical legislative judgment. We are satisfied upon this record that the attendant and compulsory closing provisions of the ordinance are neither arbitrary nor unreasonable, (see *Kaukas* v. *City of Chicago,* 27 Ill. 2d 197, 201-203; *Queenside Hills Realty Co.* v. *Saxl,* 328 U. S. 80, 90 L. ed. 1096, 66 S. Ct. 850,) and that they do not violate the constitution of Illinois or the constitution of the United States."

The police problems concerning self-service, coin-operated laundries are not limited to Chicago. In the City of New York a similar situation arose and the closing requirements and requirement of an attendant in the New York City ordinance were upheld in *Schact* v. *City of New York,*

40 Misc. 2d 303, 243 N. Y. S. 2d 272, the Court stating (243 N. Y. S. 2d at 279):

> "The Police Department has found the incidents of crime generally to be greatest between the hours of 6 P.M. and 2 A.M.
>
> "It is surely a proper municipal function to take reasonable steps toward the control and reduction of crime, particularly during these hours.
>
> "This Court is unable to say that the city legislative authorities are wholly unreasonable to the point of irrationality in believing that the police and fire problems will be somewhat alleviated by not permitting laundromats—particularly unattended laundromats, though the statute is not so limited—to be open between midnight and 6 A.M., and by requiring that between 6 P.M. and midnight laundromats have someone in attendance."

The closing of business establishments by municipal ordinance, such as laundries, during certain hours of the early morning, was considered by this Court in *Barbier* v. *Connolly*, 113 U. S. 27 and in *Soon Hing* v. *Crowley*, 113 U. S. 703, wherein the San Francisco ordinance prohibiting washing and ironing from 10 P.M. to 6 A.M. was upheld. In the *Barbier* case, this Court stated (113 U. S. at 30):

> "That fourth section, so far as it is involved in the case before the police judge, was simply a prohibition to carry on the washing and ironing of clothes in public laundries and wash houses, within certain prescribed limits of the city and county, from 10:00 at night until 6:00 in the morning of the following day. The prohibition against labor on Sunday is not involved. *The provision is merely a police regulation within the competency of any municipality possessed of the ordinary powers belonging to such bodies.*" (Emphasis supplied.)

Petitioners cite the case of *Heard* v. *Bolton*, 107 Ga. App. 863, 866, 867, 131 S. E. 2d 835, 838, in which an ordinance

of the City of Griffin regulating self-service, coin-operated laundries was under consideration (Petitioners' Brief, pp. 16-17). As indicated in the quotation set forth, "conditions may vary in different communities and circumstances surrounding such an operation may be completely harmless in one city or area and a crime breeding spot in another." The Georgia court cites the *Schact* opinion as an example of the latter type of case. It is respectfully suggested that the problems of cities the size of New York and Chicago may and do differ from a municipality the size of the City of Griffin.

Petitioners also rely upon language appearing in *Van Sciver* v. *Zoning Board of Adjustment,* 396 Pa. 646, 656, 657, 152 A. 2d 717, 723, 724. A careful examination of that opinion, however, reveals that the court there considered a question relating to an application for a variation under the Philadelphia zoning ordinance, under which the Zoning Board imposed the restrictions at issue there. Absent the issue of validity of the comprehensive regulation which is specifically related to the operations of self-service, coin-operated laundries, such as the Chicago provisions, and absent evidence directly related to those issues as is present in the instant case, the quotation set forth by petitioners is obiter dictum.

The opinion of the Illinois Supreme Court herein is correct, being well supported by the facts in the record and by law, and being in consonance with an opinion involving a city the size of New York, which is faced with similar problems, and the petition for writ of certiorari should be denied.

Conclusion.

The ordinance in the instant case reveals a distinct and legitimate legislative purpose designed to meet actual and impending problems relating to self-service, coin-operated laundries. It is neither arbitrary, nor capricious, nor an illusory pretense. That petitioners deem themselves the only parties damaged by reason of the continuing incidents requiring exercise of the police power must not be permitted to restrain the City of Chicago from fulfilling a higher duty which it owes to the entire community. It is fundamental that criminal activities such as are herein involved are wrongs committed against society, not merely the person whose rights of property may have been invaded, and laws designed to prevent such criminal activities are for the protection of the general public. If permitted to continue, successful criminal activity invites imitation, repetition and escalation.

Petitioners fail to show that the opinion of the Illinois Supreme Court is in conflict with applicable decisions of this Court or has decided any Federal question in a way so as to conflict with important questions of Federal law determined by this Court.

Wherefore, respondents respectfully pray that the petition for a writ of certiorari to the Supreme Court of Illinois be denied.

Respectfully submitted,

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APPENDIX A.

Provisions of the Illinois Municipal Code (Ill. Rev. Stat. 1965, ch. 24), insofar as they relate to the issues of this case, are as follows:

1-2-1. Ordinances and rules to execute powers—Limitations on punishments.

§-1-2-1. The corporate authorities of each municipality may pass all ordinances and make all rules and regulations proper or necessary, to carry into effect the powers granted to municipalities, with such fines or penalties as may be deemed proper.

11-1-1. Police ordinances.

§ 11-1-1. The corporate authorities of each municipality may pass and enforce all necessary police ordinances.

11-5-2. Riots and disturbances.

§ 11-5-2. The corporate authorities of each municipality may prevent or suppress riots, routs, affrays, noises, disturbances, and disorderly assemblies in any public or private place.

11-8-2. Fire hazards.

§ 11-8-2. The corporate authorities of each municipality may prevent the dangerous construction, installation and condition of chimneys, fireplaces, hearths, stoves, furnaces, pipes, ovens, boilers, fuel conduits, electric wiring and any other fire or heating apparatus used in and about any building, structure, . . . and, if such enumerated are in dangerous condition may cause them to be removed or placed in a safe condition.

11-16-1. Board of health.

§ 11-16-1. The corporate authorities of each municipality may provide for and maintain a board of health, consisting of more than one person, and to prescribe its powers and duties, . . .

11-20-5. Promotion of health.

§ 11-20-5. The corporate authorities of each municipality may do all acts and make all regulations which may be necessary or expedient for the promotion of health or the suppression of diseases, including the regulation of plumbing and the fixtures, materials, design and installation methods of plumbing systems subject to the provisions of the Illinois Plumbing Code Law. . . .

11-30-4. Construction of buildings and fire escapes.

§ 11-30-4. The corporate authorities of each municipality may prescribe the strength and manner of constructing all buildings, structures and their accessories and of the construction of fire escapes thereon.

11-42-8. Breweries—Garages—Shops—House trailers Cabins—Tents—Laundries—Bathing beaches.

§ 11-42-8. The corporate authorities of each municipality may locate and regulate the use and construction of . . . laundries. . . .

11-60-1. Issuance and revocation of licenses.

§1-60-1. The corporate authorities of each municipality may fix the amount, terms, and manner of issuing and revoking licenses.

APPENDIX B.

Sections 145-24.1 through 145-24.6 of the Municipal Code of Chicago, adopted on July 28, 1961, are as follows:

Be It Ordained by the City Council of the City of Chicago:

SECTION 1. Chapter 145 of the Municipal Code of Chicago entitled "Laundries and Laundry Vehicles" is amended by inserting the following new sections in their proper numerical sequence:

Self-Service Coin-Operated Laundry Establishments

145-24.1. Compliance.) Laundry establishments commonly known as self-service coin-operated shall comply with section 81-7, the general applicable provisions of chapter 99, and the provisions of the Chicago Zoning Ordinance.

145-24.2. Attendant.) There shall be present in every self-service coin-operated establishment of this type an attendant between the hours of 6:00 P.M. and 11:30 P.M.

145-24.3. Certificate of fitness.) No person shall act as an attendant in any such laundry establishment, unless he shall be the holder of a certificate of fitness issued by the division marshal in charge of the bureau of fire prevention and the commissioner of health. Before the issuance of any such certificate, the division marshal in charge of the bureau of fire prevention and the commissioner of health shall examine the applicant as to his qualifications to fill such position. To receive a certificate of fitness the applicant must:

(a) be a citizen of the United States;

(b) be of legal age, temperate habits and good moral character;

(c) be able to speak and understand the English language;

(d) produce evidence of his employment or occupation and residence for the previous 2 years;

(e) be familiar with the operation of the machines in the establishment; and

(f) be familiar with risks incident to the operation of the machines and capable of taking the necessary precautions.

The annual fee for the issuance or renewal of any such certificate shall be twelve dollars and shall be paid to the city collector.

Where a self-service coin-operated dry cleaning establishment and a self-service coin-operated laundry establishment are operated on the same premises only one attendant, who is the holder of a certificate of fitness issued pursuant to section 121-13.3 of this code, shall be required.

145-24.4. Plans.) Any person establishing a laundry of the coin-operated self-service type shall be required to submit to the commissioner of buildings for his approval a complete set of plans and specifications of the building in which such establishment is to be located and also a complete diagram of the floor plan of each room to be occupied by such establishment, showing the arrangement or setting of all machinery and equipment to be installed therein. Each such plan shall be explicit and complete.

145-24.5. Hours of operation.) No coin-operated self-service laundry now or hereafter established shall be operated between the hours of 11:30 P.M. and 6:30 A.M.

145-24.6. Fees.) The annual license fee for each self-service coin-operated laundry establishment is hereby fixed as follows: $150.00 for each establishment having fifteen or less self-service coin-operated machines and $5.00 for each machine in excess of fifteen machines maintained upon the premises.

SECTION 2. The last paragraph in Section 145-4 is hereby repealed.

SECTION 3. This ordinance shall become effective September 1, 1961; provided, however, that persons licensed prior to that date shall not be required to pay any further fee for the year 1961 and persons licensed subsequent to effective date hereof shall pay one-third of the fees prescribed herein for the balance of the year 1961.

Amendments to Section 145-24.3 and 145-24.4, adopted April 17, 1964, are as follows:

Be It Ordained by the City Council of the City of Chicago:

SECTION 1. Section 145-24.3 of the Municipal Code of Chicago is amended by striking out subparagraphs (a), (b), (c), (d), (e) and (f) and substituting in lieu thereof the following:

(a) be of legal age, temperate habits and good moral character;

(b) be able to speak and understand the English language;

(c) produce evidence of his employment or occupation and residence for the previous 2 years;

(d) be familiar with the operations of the machines in the establishment; and

(e) be familiar with risks incident to the operation of the machines and capable of taking the necessary precautions.

Also by striking out the sentence following said group of subparagraphs and substituting therefor the following:

Upon compliance with the above and payment to the City Collector of an annual fee of $12.00 for the issuance or renewal of any such certificate, such certificate shall be issued to the applicant.

SECTION 2. Section 145-24.4 of said Code is amended to read as follows:

> Any person establishing a laundry of the coin-operated self-service type shall be required to submit to the commissioner of buildings for his approval a complete set of plans and specifications and a complete diagram of the floor plan of each room to be occupied by such establishment, showing the arrangement or setting of all machinery and equipment to be installed therein. Each such plan shall be explicit and complete.

SECTION 3. This ordinance shall become effective upon its passage and due publication.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1966.

No. 260

MILDRED GIBBONS, NAPOLEON C. ZBYSZEWSKI, AILEEN BIEL, IDA JACOBSON, GEORGE PAPANTONATOS, LEON PERMAN, HYMAN M. STEIN, ALLEN KLEIN, KUNIO SHIMIZO, ET AL.,

Petitioners,

vs.

CITY OF CHICAGO, A MUNICIPAL CORPORATION,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF ILLINOIS.

REPLY BRIEF FOR PETITIONERS.

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THE GUNTHORP-WARREN PRINTING COMPANY, CHICAGO

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REPLY BRIEF FOR PETITIONERS.

With respect to the Statement of the Case contained in Respondent's Brief in Opposition, Petitioner does not wish to unduly burden the record, but does respectfully make these limited remarks in reply.

(1) The evidence does not show (Respondent's Brief, p. 5) that "an attendant would supervise the activities of persons on the premises during those busiest times; would be acquainted with the workings of the machinery; would have some basic knowledge of good housekeeping, thereby

nullifying the chance of fire; and would be a person to watch over the premises and the occupants and prevent anything that might occur on those premises that would lead to the jeopardy of the occupants or the building itself which may house apartments or other property uses.'' These comments were ventured by a fireman, admittedly unfamiliar with the operation of laundromats, and are of no moment in light of the finding of the Illinois Supreme Court (Petitioners' Brief, p. 29) that the danger of fire was negligible in self-service, coin-operated laundries.

(2) The speculation set forth on page 5 of Respondent's Brief, that ''an attendant could also eliminate accumulations of water, soap and other debris on the floor, caused in part by overflowing washing machines'' is irrelevant in light of the fact that there never has been a finding or even a showing that soap on the floor has been a problem at all, much less a problem of sufficient magnitude to require the ordinance herein.

(3) The statement (Respondent's Brief, p. 5) that ''the presence of a properly instructed attendant would also insure the maintenance of hygienic and sanitary conditions in such establishments as well as to maintain compliance with the ventilation requirements of the Municipal Code of Chicago, particularly where, as in such places of business, gas used for heating is being piped into the premises and where an accumulation of moisture and humidity is to be found'' is inaccurate. Neither the master nor either of the state courts so found, and the evidence in this case shows that the attendants never have performed such tasks, they being assigned to the maintenance men whose training has better fitted them for such functions (Petitioners' Brief, p. 29).

(4) As is made plain on page 6 of its brief, Respondent, in advancing its detriment to crime theory of justification for the ordinance herein, of course, runs afoul of certain

of the positive evidence, in particular, that which shows the only two murders relating to laundromats involved only laundromats which had attendants; in one case, the attendant murdered someone, and in the other case, the attendant was murdered. Respondent apparently attempts to circumvent the problem by taking the position that Petitioner made no showing that the attendants involved in these two cases could have qualified for licensing under the subject ordinance. Obviously, since these attendants are either dead or in prison, it is difficult to show their qualifications; nevertheless, it would seem reasonable to assume that they probably were of legal age, temperate habits, good moral character, able to speak and understand the English language, had evidence of employment or occupation or residence for two years, were familiar with the operations of the machines, and were familiar with risks incident to the operation of the machines and capable of taking the necessary precautions. However, even this is needless speculation, for if Respondent contends that there is a crime wave in unattended laundromats, then one crime, and probably the most serious crime, for which there should be such proof is murder. The bald fact is that on the evidence in the case at bar the only two murders took place in attended laundromats.

(5) Respondent contends (Respondent's Brief, p. 6) that crimes of larceny would decrease if an attendant were present. Robberies, of course, would increase since it is the attendant who is usually being robbed. However, it must be borne in mind that the "larcenies" to which Respondent refers are, to paraphrase the words of Respondent's witness, of the variety where $2.00 or $3.00 has been taken from the Coca Cola machine, a matter really only of concern to the owner of the laundromat. Respondent also urges that an attendant would serve to decrease and deter sex crimes, such as rape, indecent liberties and indecent

exposure. This overlooks one obvious certainty. In a marginal income industry such as this one, since the wage scale for attendants will be the bare minimum, the vast majority of these self-same attendants unquestionably will be women. Therefore, if Respondent's theory were correct, rather than cutting down on the exposure of women to the danger of sex crimes, the principal effect of this legislation will be to place a greater number of lone women in circumstances of danger than existed prior to the passage of the ordinance. This theory also overlooks the fact that there have been no instances of sexual assaults or rapes in Chicago laundromats (R. 26, p. 461).

(6) As to Respondent's contention (Respondent's Brief, p. 7) that laundromats constitute a haven for "goof ball" parties, Respondent's witness made sweeping generalizations, but when pressed for an example, could only give an instance which did not even take place in a laundromat (R. 26, p. 540), nor did the master or the chancellor or the Illinois Supreme Court make any such finding.

(7) Contrary to Respondent's suggestion (Respondent's Brief, p. 7), Petitioners' statement (Petitioners' Brief, p. 7) that at least seventy-five percent of the matters set out in the police reports were routine reports of incidents, such as juveniles congregating, not constituting crimes at all, is accurate, particularly in light of the finding of the Illinois Supreme Court (Petitioners' Brief, p. 31).

With respect to the Reasons for Denying the Writ set forth in Respondent's Brief, Petitioners respectfully make these comments in reply.

(1) Respondent suggests (Respondent's Brief, p. 8) that Petitioners urge this Court to resolve certain evidentiary issues. Petitioners do not make such a request. The findings by the Supreme Court of Illinois are clear. First, that Court concedes (Petitioners' Brief, p. 29) that the

fire and injury problem is minimal. Second, the Illinois Supreme Court makes no finding as to any particular health hazards. Third, that Court based its determination on the need of the ordinance as a deterrent to certain crimes almost entirely on the opinions of Chicago police officers that such legislation would be helpful, although the testimony of such officers clearly showed that such crimes (which they testified would be controlled by such legislation) as a practical matter were virtually non-existent in Chicago laundromats.

It is Petitioners' position before this Court that at some point in time Respondent must demonstrate a need for the particular legislation. *Nebbia* v. *New York*, 291 U. S. 502, 525 (1933); *West Coast Hotel Co.* v. *Parrish*, 300 U. S. 379, 298 (1936); and *Day-Brite Lighting, Inc.* v. *Missouri*, 342 U. S. 421, 424 (1951). It is Petitioners' further position that a determination by the state courts that there were, practically speaking, no health or fire problems in Chicago laundromats and the opinions of Respondent's witnesses (which are not only unsupported but often contradicted by their own testimony as to actual, specific crimes) do not demonstrate such a need. Accepting the facts as they are, it is impossible to find a legislative problem whose solution requires this ordinance.

(2) Respondent (Respondent's Brief, p. 15) accuses Petitioners of taking liberties with the record herein and sets forth certain of the testimony of Captain James P. Hackett as an example of such. For instance, Petitioners (Petitioners' Brief, p. 12) attributed to Captain Hackett the factual testimony that in his district "there were no attacks on women in laundromats." This, of course, is exactly what the officer said (R. 26, p. 543). In order not to take the officer's testimony out of context, in the next sentence of their brief (Petitioners' Brief, p. 12) Petitioners set out the further testimony of Captain Hackett

that "There were attacks on women in the streets, but these had occurred after they had left the lighted laundromat, such attacks being caused by the fact that the women were on the streets at night, not that they had been to the laundromat."

In viewing the additional remarks of Captain Hackett, as set out by Respondent at pages 15 and 16 of its Brief, that he *preferred* the laundromat to be closed during certain hours and that he was *worried* about someone grabbing a woman going home and that he had *heard* of such incidents being reported in the past, such hearsay, personal preference, concern and speculation do not change in any way his actual factual testimony that he *knew* of no attacks on women *in laundromats,* but that he *knew* of attacks on women *in the streets after* leaving the laundromat, such attacks being caused by the fact that the women were on the streets at night, in the same manner as they would be on the streets at night if they went to a movie or a drug store, and not being caused by the fact that they had been to a laundromat.

Without going into the matter in any greater detail, Petitioners are confident that the Court will find the testimony attributed to Respondent's witnesses by Petitioners to be accurate. In addition, in reviewing the testimony of such witnesses, it should be borne in mind that from the thousands and thousands of police officers at its disposal, Respondent selected these officers in order to put its best foot forward. It can be assumed that the testimony of these officers was reviewed beforehand by competent counsel, and that such factual evidence, aside from the obvious hearsay and conjecture, as was presented by Respondent on crime in Chicago laundromats represents all the evidence that could be mustered.

CONCLUSION.

Petitioners respectfully urge this Court that viewing the findings of the state courts and the evidence submitted thereto in the light most favorable to Respondent, there is no legislative problem with respect to coin-operated, self-service laundries in the City of Chicago requiring this totally unnecessary legislation whose financial impact will work extreme hardship on a number of small business people.

Petitioners accordingly pray that their petition for a writ of certiorari be granted.

Respectfully submitted,

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